

IBLA 84-342  
84-343

Decided February 27, 1985

Appeal from a decision of the Colorado State Office rejecting simultaneous oil and gas lease applications for failure to correctly date the application form. C-37973 and C-38026.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Where a simultaneous oil and gas lease application is dated prior to the commencement of the filing period and it is established that such misdating was merely inadvertent and not done with an intent to obtain a lease by fraud and that the application was signed during the filing period, the misdating is a nonsubstantive error which does not require the rejection of the application.

APPEARANCES: Donna M. Brady, Esq., Mineola, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Satellite 8305136 (Satellite), apparently an association of individuals, 1/ has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated January 30, 1984, which rejected its simultaneously filed oil and gas lease applications which had been selected with

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1/ Inasmuch as the State Office rejected the instant applications for misdating the application form, it did not proceed further to adjudicate the instant applications. Thus, the identity and interests of the individuals who presumably constitute Satellite 8305136 have not been ascertained. We trust that, on remand, the State Office will make further inquiries along these lines. See also 48 FR 37656 (Aug. 19, 1983).

first priority for two parcels (CO-205 and CO-206) in the July 1983 simultaneous drawing. The State Office decision was predicated on the fact that the application form submitted by Satellite contained an incomplete date, containing only the day and month but omitting the year. Satellite timely pursued this appeal. We reverse.

There is no question that, at one time, the Department and the courts rigorously enforced the requirement that the application or offer to lease submitted in the simultaneous filing program be dated. Thus, in Sorenson v. Andrus, 456 F. Supp. 499 (1978), the District Court for Wyoming affirmed rejection of an offer to lease where the day of the month had been omitted, noting that the Department "was bound" to reject such offers. Id. at 501. The rigid enforcement of the dating requirement, however, came to an abrupt end upon the issuance of the Tenth Circuit Court of Appeals' decision in Conway v. Watt, 717 F.2d 512 (1983).

The Conway case involved the rejection of an application for the complete omission of a date. In Conway, the applicant had filed 147 drawing entry cards (DEC's) during the simultaneous filing period. Of these, 146 were properly dated. By inadvertence, however, the applicant neglected to date one card which was ultimately drawn with first priority for a parcel. BLM rejected this application and, in a decision styled Joe Conway, 59 IBLA 314 (1981), this Board affirmed the rejection.

In reversing the Board's decision (and that of the district court, as well), the court noted that it was called upon to consider only one issue "namely, whether the absence of a date renders this DEC per se defective." 717 F.2d at 513. After noting that this was the only DEC out of 147 filed by Conway which had not been dated, and that it was not contended that the card had been signed outside of the filing period, the court concluded that "Conway's failure to date his DEC would indeed appear to be de minimis, a non-substantive error." Id. at 516.

It is important, however, to recognize that the Conway court did not hold that the Secretary could not establish per se rules. On the contrary, the court clearly held that the requirement that the DEC or application form be signed within the filing period was properly enforced against all applicants as a substantive rule. Thus, the court noted:

In light of the foregoing, we hold that although the Secretary can require a signature date, he cannot make its absence a per se disqualification. When a date inadvertently is omitted and if the Secretary is concerned that the omission is fraudulent, he may require an applicant to produce proof that his or her signature was made on a qualifying date and that all other qualifications were satisfied as of that date. Such subsequent verification of qualifying status provides an adequate basis for the Secretary to proceed against an applicant on the basis of fraud.  
[Emphasis supplied.]

Id. at 517. Thus, the Conway court explicitly held that the failure to sign within the filing period was a fatal defect, while the failure to supply a date that would show this fact was not necessarily a disqualifying omission. 2/

Since the Conway decision, this Board has been careful to distinguish between the inadvertent omission or misdating of the application form and the inclusion of a correct date which establishes that the form was not signed within the filing period as required by 43 CFR 3112.2-1(c). Thus, in Amberex Corp., 78 IBLA 152 (1983), this Board reversed the rejection of an application which was signed within the filing period, but which had inadvertently been misdated. On the other hand, in Thomas N. Gwyn, 82 IBLA 11 (1984), this Board affirmed rejection of an application, where the appellant admitted it had not been signed within the filing period.

The instant case, however, clearly falls within the category of an inadvertent omission of the date, as appellant avers its agent completed 60 application forms on the same day, but neglected to date only the application form involved herein. Therefore, consistent with both Conway and Amberex Corporation, we must reverse the rejection of these applications for failure to date the application form. We wish to emphasize, however, that our action should in no way be interpreted as forestalling further adjudication by the State Office on any other aspect of these applications.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case files are remanded for further adjudication by the State Office.

James L. Burski  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Gail M. Frazier  
Administrative Judge

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2/ To the extent that the Montana District Court in Adomkus v. Clark, CV 82-260-BLG (D. Mont., Aug. 29, 1984), effectively held that the Department could not reject an application which was signed outside of the filing period, its decision was directly contrary to the Conway holding, upon which it was purportedly based.

